



LOUISIANA PUBLIC DEFENDER BOARD MEMO

To: The Board
From: Jean M. Faria
Re: Report of the State Public Defender
Date: March 15, 2010

BUDGET

Beginning April 1, 2010, our Accountant, Natasha Carter and Budget Officer Marianne Buchanan will be concentrating on ensuring that all line items of our budget will be expended by June 30, 2010. They will be working with staff to identify funds allocated for administrative needs, which will not be used, for distribution to the districts. As of January 31, 2010, \$49,991 was identified for redistribution. As the end of the fiscal year approaches it is likely that this figure will increase.

Budget Chair Luceia LeDoux and staff were present at the House Appropriations hearing of March 3, 2010. No opposition was voiced regarding the additional \$6.7 million approved by the Governor's Office in the Executive Budget for next fiscal year. Representative Hazel asked several questions about the Capital Appeals Project, and the decline in some districts' semi-annual District Assistance Fund distributions. Representative Patricia Smith asked how many new attorneys are needed to cover the additional workload that comes with the transfer of the Department of Social Services funds to us for parent representation in the next fiscal year.

Capital Contracts

Several provisions in the capital panel contracts have been changed. The Capital Division and the State Public Defender are now talking with the Executive Directors of the affected 501(C)(3)s to finalize the contracts.

CINC Distribution

The Parent Representation funding transfer from the Department of Social Services in the amount of \$154,175 is to take place by the Joint Legislative Committee on the Budget on March 19, 2010. The proposed distribution is included under Tab 3.

CAPITAL DIVISION

The Capital Division continued to monitor ongoing cases and to approve expert witness requests. The Motion for New Trial Project, headed by contract program LCAC, was involved in the substantial effort to win a new trial in the Anderson case, which was the first death sentence handed down in Orleans in many years. *Brady* and *Giglio* violations were uncovered.

Another significant development was the approval by Civil Service of unclassified status for five years of the Capital Case Coordinator position previously approved by the Board. General Counsel is primarily responsible for this effort. The position will now be advertised nationally.

Staff will be asking the Board to approve creation of a temporary position for three years to provide administrative support for the Capital Coordinator position. We cannot add to our T.O. which is why we are asking for approval to create and budget for this position.

COMPLIANCE DIVISION

The Compliance Division participated in site visits to the 9th JDC (Rapides), the 22nd JDC (St. Tammany/Washington), and the 25th JDC (Plaquemines). A Preliminary Hearing Project presentation by Compliance and Training was conducted in the 22nd Judicial District. Substantial time was spent evaluating and monitoring Orleans, where the public defenders and the District Attorney are at odds with the bench on revising the allotment procedure to make vertical representation more efficient and effective. Compliance also participated in the first meeting of the Assistant Defender Advisory Council (ADAC), which was attended by defenders from the 1st, 9th, 19th, and 22nd districts. Plans were made to continue scheduling meetings and for outreach to other districts.

JUVENILE DIVISION

Since the February 11, 2010, Board meeting, juvenile staff has developed site visit protocols based on the 10 principles of juvenile defense. Staff participated in a site visit to the 9th JDC on February 25, 2010. Staff was also active in agency-wide strategic planning on February 23 -24, 2010, including strategic planning for the juvenile, compliance, and agency development divisions of the agency.

On February 17, 2010, staff attended the Legislative Task Force for Child Protection Cases. Juvenile staff handled calls from defenders and members of the Implementation Subcommittee to facilitate the transition to the Parent Representation Program statewide in all defender offices that began January 1, 2010.

Other staff activities include: Attendance of Children's Code Committee on February 26, 2010, where a proposal was presented to consider a statute addressing children with multiple needs; meeting with the Southern Poverty Law Center in New Orleans on March 11, 2010 regarding legislative session strategy and training opportunities; attending District Defender Management Training on March 12, 2010; and a presentation at the Law Institute on March 13, 2010, regarding the proposed juvenile confessions statute. Staff was appointed to a commission to develop juvenile detention center licensing regulations, attended a meeting about the regulations on February 22, 2010, and helped to draft a report.

The first meeting of the Juvenile Defender Advisory Committee (JDAC) was held in Opelousas, Louisiana on February 26, 2010, with staff facilitating the meeting. The members of the Juvenile Defender Advisory Committee are: Bobby Manning (4th JDC) – Chairperson; Kristen Bernard (1st JDC); Clifton Spears (9th JDC); Harry Fontenot (14th JDC); Chris Boudreaux (17th JDC); Pete Holmes (19th JDC); Tim Webre (24th JDC); and Ilona Picou (41st JDC). Committee members reviewed the Child in Need of Care Performance Standards. The committee gave specific feedback to be incorporated into the standards and expressed an interest in ensuring that the standards were feasible and achievable. The next JDAC meeting is scheduled for April 16, 2010.

An amicus filing by the 19th JDC, the LSU Law Clinic, and LACDL in a juvenile case resulted in a ruling in favor of the child. *State in the Interest of T.C.*, 09-1852 (La.App. 1 Cir. 02/12/10); 2010 La. App. LEXIS 231. The prosecutor in this case was trying to transfer a child to adult court and the defense attorney (private counsel) was trying to keep the child in juvenile court for the competency examination. The Louisiana First Circuit decided that the child should stay in juvenile court for the competency examination. However, the District Attorney is taking the case to the Louisiana Supreme Court. In response, staff is again involved in preparing to assist in the filing of amicus briefs.

TRAINING

Scheduling and planning have begun for the capital trainings. Attached to this report is a detailed explanation of the Capital Defense Training Program for the next eighteen months. The Capital Defender Training, a 3-day bring-your-own-case confidential training being provided with the CCLI grant from BJA, is scheduled for June 24-26, 2010 in New Orleans. The Training Division is in the process of locating a facility and identifying faculty for this training. The prosecutors' trainings, also being provided by the CCLI grant, are being developed in collaboration with the Louisiana District Attorneys' Association and other stakeholders. A description of the training is attached to this Report. The Capital Certification Seminar, a 2-day conference for defenders who do not currently have a capital case, is scheduled for October 21-22, 2010. Details for this seminar are being developed.

The *Supervision & Management: Defender Leadership Training* is scheduled for March 12-13, 2010 in Baton Rouge. The course is an interactive training, addressing issues such as office management and problem solving techniques, management of attorney workload, and trends in indigent defense nationwide.

Part II of the trial skills pilot project training is scheduled for April 10, 2010. This training will be provided to attorneys from the 19th District Defender Office and will cover evidentiary issues and opening statements. Part III is being developed and will be held on June 19, 2010.

Planning for the Defender Training Institute 2010 is in full swing. The Holiday Inn South in Baton Rouge was awarded the bid for this training. The agenda is being developed and faculty are being identified and invited. This training will be an intense 7-day course designed to provide skills training to new public defenders as well as to create a system of mentors and public defender networks. The DTI 2010 will be held September 12-18, 2010.

Additional trainings being provided in 2010 are listed in the attached flyer.

SPECIAL PROJECTS

Special Projects Advisor Heather Hall has completed two sections of the four-section website and is in the final stages of readying the website for launch. She continues to circulate the bi-monthly e-newsletter, which is readying for its 6th issue and is sent to almost 900 members.

Special Projects Advisor Hall staffs the Assistant Defender Advisory Committee, which held its first meeting in Baton Rouge on February 26, 2010. Seven assistant defenders from 6 districts attended the first meeting and hatched the idea that they reach out to recruit an 'Assistant Defender LPDB Liaison' from every district. They also had several requests for resource support from LPDB. The next meeting, with increased assistant defender attendance, is scheduled for March 26, 2010 at LPDB. LPDB is dedicated to supporting districts through the 'Assistant Defender LPDB Liaison' and being responsive to the frequency and content of meetings requested by this vehicle. Roger Harris, John Di Giulio and Jean M. Faria also attended the meeting.

Special Projects Advisor Hall continues to support the Capital Case Litigation Initiative training, the National Juvenile Defender Center Regional Training (training scheduled for Houma, LA in late summer), and the Cultural Competency Trainings (a tentative collaboration with the National Legal Aid and Defender Association through a grant from the Open Society Institute). She also assisted in the drafting and revision of the Report to the Joint Committee on the Budget, and provided intensive staff support and logistics management to our 1½ day facilitated strategic planning session (February 22-23, 2010) and its follow-up. She has also delivered on a request to create an investigator list-serv (requested by several investigators) and has requested investigator contact info from all districts. The listserv will be begin by March 15, 2010. Both the investigator listserv and the juvenile defender listserv will be moderated by Special Projects Advisor Hall.

Finally, Special Projects Advisor Hall continues to support the Defender Services Programs in Orleans and Plaquemines through service opportunity planning, program promotion and general communication. She more intensively supports the Plaquemines Defender Services Program through weekly staff meetings and frequent communication/technical support.

INFORMATION TECHNOLOGY & MANAGEMENT DIVISION

With data received before or on January 21, 2010, the ITM Division coordinated production, reproduction and distribution of the 660 page CY '09 Annual District Report. On March 1, 2010, the Annual Financial Report was delivered to the Joint Legislative Committee on the Budget and the 140 page catalogue of CY '09 Annual year-end financial reports for the Budget Committee were compiled and completed.

After a 1 ½ day in-house strategic planning session, ITM began working with designated team members to draft its Division's Strategic Plan to be incorporated into the LPDB Staff Strategic Plan.

Based on data and working with the State Public Defender, ITM helped compile several possible DAF calculations and distributions of the 7.6 million dollar proposed increase to the LPDB budget.

STAFF UPDATE

LPDB staff participated in strategic planning on February 23 and 24, 2010. The staff developed a new mission statement and six core organizational values. All of which will be presented to the Board upon completion for the Board's review and vote.

GENERAL

Mr. Neuner and the State Public Defender attended the National Symposium on Indigent Defense in Washington, DC on February 18-19, 2010. Mr. Neuner was a panelist on involving the private bar, while Ms. Faria moderated a panel on juvenile brain development and the voluntariness of juvenile confessions. Senators Lydia Jackson and Jean Paul Morrell, Associate Justice Bernette Johnson, Derwyn Bunton, Christopher Flood, Illona Picou, and Robert Smith were also in attendance.

On February 23, 2010, Ms. Buchanan and Ms. Faria attended the Senate Finance Committee hearing. No questions were asked by the Committee. House Appropriations Committee hearing, held March 3, 2010, was a different story. See, BUDGET, page 1 of this report.

Ms. Faria attended the first organizational meeting of the newly reformed Sentencing Commission on February 24, 2010. The Louisiana Commission on Law Enforcement and the administration of Criminal Justice again, is staffing the Sentencing Commission. Ms. Faria is an *ex officio* member of the Sentencing Commission.

The Report to the Joint Legislative Committee on the Budget was filed March 1, 2010. The JLCB staff instructed staff to provide one hard copy and an electronic copy of the document, which was done.

Chairman Neuner, State Public Defender Faria and Compliance Officer Di Giulio attended the Louisiana District Attorneys' Association's (LDAA's) Winter Meeting in New Orleans on March 5, 2010. Specific issues the elected district attorneys requested be addressed were proposed legislation, budget and strategic planning. After LPDB's presentations, questions regarding the Children's Code, reclassification of misdemeanors and whether LPDB funding to districts is tied to the number of motions filed were also asked.

General Counsel Roger Harris has begun reviewing the prefiled bills for this legislative session. Mr. Di Giulio and Ms. Faria will be reviewing all the bills related to criminal law and indigent defense with the Louisiana Public Defender Association and the Louisiana Association of Criminal Defense Lawyers on March 20, 2010.

The Division of Administration has notified staff that LPDB's Strategic Plan is due July 1, 2010. This is a requirement of the Division. Specifically, we are expected to provide our three-year update. To date we cannot locate any strategic planning done by our predecessors, so we will work from the template given to us by the Division and will begin that process with the Board at the April meeting.

Finally, on February 26, 2010, Honorable Arthur Tarnow of the United States District Court for the Eastern District of Michigan, ordered the release of Petitioner Murad Williams from his state imposed sentence, citing the 11 Principles of a Public Defense Delivery System – Michigan's

version of the ABA's 10 Principles -- concluding that petitioner was constructively denied the assistance of counsel at his probation violation hearing. (Opinion attached).

Litigation Update

Anderson, et al. v. The State of Louisiana, et al. This is a suit arising out of the operation of the 14th Judicial District Public Defender's Office in Calcasieu Parish. The suit, which seeks class action certification, pits several former and current inmates of Calcasieu Correctional Center against the State of Louisiana, through the Governor, and the Louisiana Legislature; the Louisiana Public Defender Board (LPDB) is not a defendant in this matter. The suit, which focuses on the lack of funding available for public defense in Calcasieu Parish, was filed in Calcasieu Parish and subsequently transferred to East Baton Rouge Parish as a result of mandatory venue provisions. At present, the matter is pending before Judge R. Michael Caldwell. On Monday, March 8, 2010, Judge Caldwell heard the State of Louisiana's exceptions of no cause of action and no right of action. Judge Caldwell overruled the exception of no right of action and granted the exception of no cause of action, then gave the plaintiffs twenty (20) days to amend their complaint.

Cannon v. Sixth District Public Defender, et al. Raymond L. Cannon, a former contract assistant public defender was terminated by Sixth Judicial District Defender Leroy Smith, Jr. at the end of November 2009, ostensibly as a result of insufficient funding. Cannon responded to the termination by suing Smith, the District Defender's Office, and the LPDB in federal court seeking among other things, a TRO and, in due course, a preliminary injunction reinstating Cannon to his former position. Cannon set forth ten (10) federal claims and three (3) state claims in his complaint against all defendants, including the LPDB; however, Cannon's complaint contains no factual allegations against the LPDB. Chief Judge Robert James denied the TRO and set the motion for preliminary injunction for hearing on March 2, 2010. However, the week before the hearing, Chief Judge Robert James recused himself. The case has been transferred from the Monroe Division to the Shreveport Division, where it now will be decided by Senior Judge Donald E. Walter. All dates are on hold until further notice.